



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS

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August 26, 1947

Hon. Beauford H. Jester      Opinion No. V-361  
Governor of Texas  
Austin, Texas

Re: Rio Grande Com-  
pact - Authority  
of Compact Com-  
mission to amend.

Dear Governor:

We have your letter of June 25, 1947, in which you request our opinion on certain proposed changes in the Rio Grande Compact. The problems which arise in this connection are set out in an accompanying letter addressed to you by Hon. J. E. Quaid, Texas Commissioner on the Rio Grande Compact Commission, from which we quote as follows:

"I respectfully take the liberty to direct your attention to Title 128 for the Revised Civil Statutes of Texas and Article 7466-1, relating to the terms of the Rio Grande Compact Commission. This is found in the Pocket Parts of the Statute. Article XIII thereof provides that at the expiration of every five years, the Commission may review any provision thereof, which is not substantive in character, and which does not affect the basic principles upon which the Compact is founded.

"Last year the New Mexico Commissioner made a request for a review with reference to the deliveries by New Mexico to Texas. The matter was referred to the Engineering Advisors of the respective States, to wit: Texas, New Mexico and Colorado. They have worked out a new schedule with reference to gaging stations and measurements. They have made a report back to the Commission, which I herewith enclose. Each state is submitting to its Attorney General, the question of whether or not, the suggested changes in the re-

port are substantive in character, and could be made without amending the Compact through the three Legislatures and through the Federal Government. The Engineering Advisors state that the obligations of the respective states for the deliveries of water are not changed in any substantial manner.

"I am asking that this matter be submitted to the Attorney General of Texas and an opinion be given you as to whether or not this change could be made without violating the said Article XIII of the Compact. If the legal proposition involved is answered favorable to the Report, then my next step will be to advise with the Water Districts below the Elephant Butte Dam, who would be affected favorably or unfavorably by the change. Of course, the first question is, can this change be legally made without amending the whole Compact?"

We have also been furnished with a report by the Commission which describes its investigation and the conclusions reached recommending the changes. It is proposed to eliminate two gaging stations, namely, San Acacia and San Marcial. San Marcial is presently used as the lower index station for the purpose of computing New Mexico's obligation to deliver water. It is proposed that a gaging station now existing below Elephant Butte Reservoir be substituted as the lower index station in place of San Marcial. Because of this substitution, the tabulation of relationship between the upper index station (Otowi) and the lower index station required to determine the measure of New Mexico's obligation to deliver water must be redrawn. In addition, the measure of New Mexico's obligation will, in future, be computed on the basis of twelve month's flow, rather than the present nine month's flow. The months presently excluded are July, August and September. By unanimous agreement, the Commissioners find that the changes indicated will result in substantially the same obligation and result as now exists under present practice.

To accomplish these changes, the Commission has proposed and recommended in its report that lines

(i) and (j) of Article II of the present compact be deleted and that Article IV be rewritten. We deem it necessary to set out in full Article IV as it presently exists and Article IV as proposed by the Commission:

Article IV (of the present Compact):

"The obligation of New Mexico to deliver water in the Rio Grande at San Marcial, during each calendar year, exclusive of the months of July, August, and September, shall be that quantity set forth in the following tabulation of relationship, which corresponds to the quantity at the upper index station:

"Discharge of Rio Grande at Otowi Bridge and at San Marcial exclusive of July, August and September

Quantities in thousands of acre-feet

Otowi Index Supply (5)	San Marcial Index Supply (6)
100	0
200	65
300	141
400	219
500	300
600	383
700	469
800	557
900	648
1000	742
1100	839
1200	939
1300	1042
1400	1148
1500	1257
1600	1370
1700	1489
1800	1608
1900	1730
2000	1856
2100	1985
2200	2117
2300	2252

"Intermediate quantities shall be computed by proportional parts.

"(5) The Otowi Index Supply is the recorded flow of the Rio Grande at the U.S.G.S. gaging station at Otowi Bridge near San Ildefonso (formerly station near Buckman) during the calendar year, exclusive of the flow during the months of July, August, and September, corrected for the operation of reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and Otowi Bridge.

"(6) San Marcial Index Supply is the recorded flow of the Rio Grande at the gaging station at San Marcial during the calendar year exclusive of the flow during the months of July, August, and September.

"The application of this schedule shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gaging stations; (b) depletion after 1929 in New Mexico at any time of the year of the natural runoff at Otowi Bridge; (c) depletion of the runoff during July, August, and September of tributaries between Otowi Bridge and San Marcial, by works constructed after 1937; and (d) any transmountain diversions into the Rio Grande between Lobatos and San Marcial.

"Concurrent records shall be kept of the flow of the Rio Grande at San Marcial, near San Acacia, and of the release from Elephant Butte Reservoir, to the end that the records of these three (3) stations may be correlated."

Article IV (as proposed):

"The obligation of New Mexico to deliver water in the Rio Grande into Elephant Butte Reservoir during each calendar year shall be measured by that quantity set forth in the following tabulation of relationship which corresponds to the quantity at the upper index station;

DISCHARGE OF RIO GRANDE AT OTOWI BRIDGE AND  
ELEPHANT BUTTE EFFECTIVE SUPPLY

Quantities in thousands of acre feet

Otowi Index Supply (5)	Elephant Butte Effective Index Supply (6)
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100	57
200	114
300	171
400	228
500	286
600	345
700	406
800	471
900	542
1000	621
1100	707
1200	800
1300	897
1400	996
1500	1095
1600	1195
1700	1295
1800	1395
1900	1495
2000	1595
2100	1695
2200	1795
2300	1895
2400	1995
2500	2095

2600	2195
2700	2295
2800	2395
2900	2495
3000	2595

Intermediate quantities shall be computed by proportional parts.

"(5) The Otowi Index Supply is the recorded flow of the Rio Grande at the U.S.G.S. gaging station at Otowi Bridge near San Ildefonso (formerly station near Buckman) during the calendar year, corrected for the operation of reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and Otowi Bridge.

"(6) Elephant Butte Effective Index Supply is the recorded flow of the Rio Grande at the gaging station below Elephant Butte Dam during the calendar year plus the net gain in storage in Elephant Butte Reservoir during the same year or minus the net loss in storage in said reservoir, as the case may be.

"The application of this schedule shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gaging stations; (b) depletion after 1929 in New Mexico of the natural runoff at Otowi Bridge; and (c) any trans-mountain diversions into the Rio Grande between Lobatos and Elephant Butte Reservoir."

The Compact is shown in full as Article 7466e-1, Vernon's Civil Statutes. The solution to the question presented depends upon interpretation and construction of Articles V and XIII of the Compact, which we now copy in full:

ARTICLE V -

"If at any time it should be the unanimous finding and determination of the Com-

mission that because of changed physical conditions, or for any other reason, reliable records are not obtainable, or cannot be obtained, at any of the stream gaging stations herein referred to, such stations may, with the unanimous approval of the Commission, be abandoned, and with such approval another station, or other stations, shall be established and new measurements shall be substituted which, in the unanimous opinion of the Commission, will result in substantially the same results, so far as the rights and obligations to deliver water are concerned, as would have existed if such substitution of stations and measurements had not been so made."

ARTICLE XIII -

"At the expiration of every five-year period after the effective date of this Compact, the Commission may, by unanimous consent, review any provisions hereof which are not substantive in character and which do not affect the basic principles upon which the Compact is founded, and shall meet for the consideration of such questions on the request of any member of the Commission; provided, however, that the provisions hereof shall remain in full force and effect until changed and amended within the intent of the Compact by unanimous action of the Commissioners, and until any changes in this Compact are ratified by the Legislatures of the respective States and consented to by the Congress, in the same manner as this Compact is required to be ratified to become effective."

In our opinion, under Article XIII of the Compact, no change in the nature of an amendment affecting the verbiage and physically changing or rewriting any of the provisions of the Compact can be made without ratification by the Legislatures of the three states and consented to by the Congress, whether the change be substantive in character or not. Article XIII clearly covers changes in this regard which are not substantive. A substantive change would necessarily require ratification. This prohibition relates to all provisions of the Compact,

including Articles II, IV and V. It appears from the Commission's Report that it proposes to amend the Compact by substituting new provisions to take the place of provisions as now written. The first two paragraphs of Commissioner Quaid's letter to you indicate that the Commission has proceeded in the matter of amendment under and in accordance with Article XIII. In our opinion, the Commission may not proceed under Article XIII and delete any provision of the Compact and substitute in lieu thereof a new provision unless it secures ratification as required by such article.

This does not mean that the changes which the Commission recommends and the result which it seeks to obtain by its amendment cannot be accomplished without ratification.

Article V specifically anticipates and covers the procedural changes which the Commission seeks. It permits accomplishment by the actual doing of those things the Commission seems to feel can be done only by amendment and actual change in the verbiage of the Compact. The Commission expresses concern over whether or not the changes are substantive. So long as the change is permitted by Article V, it is immaterial whether the change is substantive or not, since the substantive criteria is not a part of Article V but relates only to Article XIII. In our opinion, and so long as the Commission complies with the requirements of Article V, it can effect the result which it seeks by unanimous consent and the affirmative doing of the thing desired and to reach this result, we see no need to amend the Compact.

The distinction we have made between Articles V and XIII may seem contradictory. If there is contradiction, then we are unable to reconcile these two articles which, otherwise, would be in hopeless conflict as concerns the matter of ratification. It is stated in Article XIII that the ". . . provisions hereof shall remain in full force and effect. . . until any changes in this Compact are ratified. . . ." If it is intended that "changes" shall refer to the physical aspects of the provisions of the Compact, rather than to the purposes which these same provisions intend, and this, in our opinion, is what is meant, then there is still room within which Article V can effectively operate, since Article V obviously relates to change in method, approach, or procedure within certain applicable provisions, namely, Articles II, III



and IV. If, on the other hand, changes as used in Article XIII mean every change of result or procedure within any of the Compact provisions, then it takes away what has already been clearly authorized by Article V.

Assume for the purpose of this opinion that there is hopeless conflict between these Articles. In that event, under well established rules of statutory construction, which we believe are applicable to the Compact involved here, it is our opinion that Article V being specific and relating clearly to the matters which it covers (Articles II, III and IV) would overrule and prevail over the more general purposes of Article XIII. See 39 Tex. Jur. 212, 59 C. J. 1000, 50 Am. Jur. 371. We consider the following language from 25 R. C. L., pages 1010 and 1011, applicable here:

" . . . Where there is, in the same statute, a general prohibition of a thing and a special permissive recognition of the existence of the same thing under regulation, the particular specified intent on the part of the legislature overrules the general intent incompatible with the specific one. Additional words of qualification needed to harmonize a general and a prior special provision in the same statute should be added to the general provision, rather than to the special one.

" . . . It has been said that, in case of conflict between the provisions of the same statute, those susceptible of but one meaning will control those susceptible of two, if the act can thereby be rendered harmonious. When one section of a statute treats specially and solely of a matter, that section prevails in reference to that matter over other sections in which only incidental reference is made thereto; not because one section has more force as a legislative enactment than another, but because the legislative mind, having been in the one section directed to the particular matter, must be presumed to have there expressed its intention thereon rather than in other sections

where its attention was turned to other things. . . ."

In our opinion, all of the proposed changes are within the permissive provisions of Article V. However, it has been with some difficulty that we have reached this conclusion regarding inclusion of the July, August and September flow in computing New Mexico's obligation to deliver water. The Commission may substitute new measurements "which, in the unanimous opinion of the Commission, will result in substantially the same results. . . ." and since the Commissioners have all agreed that inclusion of July, August and September flow in arriving at the new measurements will produce substantially the same result as now obtains, we accordingly have concluded that such change is permissive under Article V.

In conclusion, you are advised that, under either of the theories advanced above, and so long as the Commission keeps within Article V, it may accomplish the result which it seeks. The Commission may not change the physical aspects of the Compact as it seeks to do by amendment without ratification.

#### SUMMARY

The Rio Grande Compact Commission is authorized by Article V of the Compact (Article 7466e-1, V. C. S. ), with the unanimous approval of the Commission, to discontinue certain gaging stations and substitute a new station, or stations, new periods of flow, and new tabulations for the purpose of measuring New Mexico's obligation to deliver water into the Rio Grande. The results achieved through the change must be, in the unanimous opinion of the Commission, substantially the same as those which obtain under the Compact. Article XIII of the Compact has no applica-


Hon. Beauford H. Jester - Page 11--V-361

tion so long as the change is contemplated by Article V.

Yours very truly

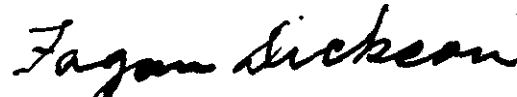
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